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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

RE: *OL* DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

TEDDY SEUNG BAEK,

Petitioner,

vs.

DAVID LONG, Warden, et al.,

Respondents.

Civil No. 13CV3206 BEN DHB

ORDER DISMISSING HABEAS  
PETITION WITHOUT  
PREJUDICE AS SECOND OR  
SUCCESSIVE

On December 20, 2013, Petitioner, a state prisoner proceeding pro se, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. In this action Petitioner is challenging his February 7, 2008, San Diego County Superior Court conviction and sentence in Case No. SCD203314. (See Petition at 1-2, ECF No. 1.)

**PRIOR FEDERAL HABEAS PETITIONS DENIED ON THE MERITS**

On February 21, 2013, Petitioner filed in this Court a Petition for Writ of Habeas Corpus in Southern District of California Civil Case No. 13cv0421 MMA (BLM). (See Petition in So. Dist. Ca. Civil Case No. 13cv0421 MMA (BLM), ECF No. 1.) In that petition, Petitioner also challenged his conviction and sentence in San Diego Superior Court Case No. SCD203314. On December 16, 2013, this Court dismissed the petition because it had been filed after the expiration of the one-year statute of limitations. (See Order filed 12/16/13 in So. Dist. Ca. Civil Case No. 13cv0421 MMA (BLM), ECF NO.

1 17.) Petitioner filed a notice of appeal in that case on December 23, 2013. (See So. Dist.  
2 Ca. Civil Case No. 13cv0421, ECF No. 19.) A certificate of appealability was denied  
3 on December 30, 2013. (*Id.* at ECF No. 22.)

4 **INSTANT PETITION BARRED BY GATEKEEPER PROVISION**

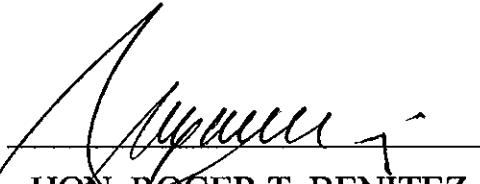
5 Petitioner is now seeking to challenge the same conviction he challenged in his  
6 prior federal habeas petition. Unless a petitioner shows he or she has obtained an order  
7 from the appropriate court of appeals authorizing the district court to consider a  
8 successive petition, the petition may not be filed in the district court. *See* 28 U.S.C. §  
9 2244(b); *McNabb v. Yates*, 576 F.3d 1028, 1030 (9th Cir. 2009) (holding that dismissal  
10 for failure to comply with one-year statute of limitations renders subsequent petitions  
11 challenging the same conviction or sentence “second or successive” under 2244(b)).  
12 Here, there is no indication the Ninth Circuit Court of Appeals has granted Petitioner  
13 leave to file a successive petition.

14 **CONCLUSION**

15 Because there is no indication Petitioner has obtained permission from the Ninth  
16 Circuit Court of Appeals to file a successive petition, this Court cannot consider his  
17 Petition. Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner  
18 filing a petition in this court if he obtains the necessary order from the Ninth Circuit  
19 Court of Appeals. ***The Clerk of Court is directed to mail Petitioner a blank Ninth  
20 Circuit Application for Leave to File Second or Successive Petition together with a  
21 copy of this Order.***

22 **IT IS SO ORDERED.**

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24 DATED: 1/10/14

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HON. ROGER T. BENITEZ  
United States District Judge